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22 UNITED STATES DISTRICT COURT
23
24 NORTHERN DISTRICT OF CALIFORNIA

25 IN RE VIOLIN MEMORY INC.
26 SECURITIES LITIGATION

27 Master Docket No. 13-CV-05486-YGR

28 Hon. Yvonne Gonzalez Rogers

**JOINT MEMORANDUM AND POINTS
OF AUTHORITIES IN FURTHER
SUPPORT OF THE SHEHK INVESTOR
GROUP'S MOTION FOR
APPOINTMENT AS LEAD PLAINTIFF
AND SELECTION OF COUNSEL**

Date: March 4, 2014
Time: 2:00 p.m.
Courtroom: 5, 2nd Floor

Lead Plaintiff movants Ali Shehk (“Shehk”) and Alan Richards (“Richards”) (Shehk and Richards together, the “Shehk Investor Group”) submit this Joint Memorandum in further support of their motion for Appointment as Lead Plaintiffs and Approval of Lead Counsel. The Shehk Investor Group possesses the largest financial interest in this litigation and is the “most adequate plaintiff” under 15 U.S.C. § 78u-4 and 15 U.S.C. § 77z-1. All other movants have either withdrawn their motions or declined to oppose the Shehk Investor Group’s motion, and otherwise failed to rebut the Shehk Investor Group’s position as the presumptive Lead Plaintiff. Consequently, the Shehk Investor Group respectfully requests that its motion be GRANTED.

**THE SHEHK INVESTOR GROUP REMAINS THE MOST
ADEQUATE PLAINTIFF TO REPRESENT THE CLASS**

The Court received four motions for Appointment as Lead Plaintiff and Approval of Lead Counsel. The movants were: (1) Shehk, (2) Richards, (3) Joseph Jaspersen (“Jaspersen”), and (4) William Merlino (“Merlino”).

Shehk and Richards. Shehk and Richards, having reviewed the competing motion papers, decided to join together and form the Shehk Investor Group. *See* Shehk Investor Group Joint Memorandum, ECF No. 48.¹ The Shehk Investor Group possesses the largest financial interest in the litigation with approximately \$65,000 in aggregate losses. *See* Shehk Investor Group Joint Memorandum, ECF No. 48, p. 4. Furthermore, the Shehk Investor Group is the only movant with standing to prosecute the pending Section 12(a)(2) claim under the Securities Act of 1933. *See id.* at p. 5. The Shehk Investor Group is presumptively the “most adequate plaintiff” under 15 U.S.C. § 78u-4 and 15 U.S.C. § 77z-1. *See, e.g., In re Cavanaugh*, 306 F.3d 726, 729-30 (9th Cir. 2002) (citing 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)).

Jaspersen. Jaspersen did not have the largest financial interest in the litigation. As such, he was not the “most adequate plaintiff” and accordingly withdrew his motion. *See* Jaspersen Notice of Withdrawal, ECF No. 46.

¹References to “ECF No. __” refer to the corresponding docket entry in the Master Docket, 4:13-cv-05486-YGR, unless indicated otherwise.

1 **Merlino.** Merlino, similar to Jaspersen, conceded he “[did] not possess the ‘largest
2 financial interest in the relief sought by the class,’ as required by the PSLRA.” *See* Merlino
3 Notice of Non-Opposition, ECF No. 47. While Merlino did not withdraw his motion, he filed a
4 Notice of Non-Opposition which failed to rebut the Shehk Investor Group’s status as the
5 presumptive Lead Plaintiff. *See id.*

6 Where, as here, a presumptive lead plaintiff’s motion is unopposed, the motion should
7 be granted. *See Booth v. Strategic Realty Trust, Inc.*, No. 13-cv-04921-JST, 2014 U.S. Dist.
8 LEXIS 10501 (N.D. Cal. Jan. 27, 2014); *City of Dearborn Heights Act 345 Police & Fire Ret.*
9 *Sys. v. Align Tech., Inc.*, No. 12-CV-06039-LHK, 2013 U.S. Dist. LEXIS 76416 (N.D. Cal. May
10 29, 2013); *City of Royal Oak Ret. Sys. v. Juniper Networks, Inc.*, No. 5:11-CV-04003-LHK,
11 2012 U.S. Dist. LEXIS 2776 (N.D. Cal. Jan. 9, 2012); *see also Foster v. Maxwell Techs., Inc.*,
12 No. 13-cv-00580-BEN-RBB, 2013 U.S. Dist. LEXIS 154538 (S.D. Cal. Oct. 24, 2013).
13 Pursuant to 15 U.S.C. § 78u-4, 15 U.S.C. § 77z-1, and the persuasive precedent from this
14 District, the Shehk Investor Group respectfully requests that its motion be GRANTED in its
15 entirety.

16 Dated: February 18, 2014

Respectfully submitted,

KAPLAN FOX & KILSHEIMER LLP

By: /s/ Mario M. Choi

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